

Managing Volunteers and Volunteer Risk

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Shortage of volunteers?

- Shortage of available workers will likely mean increased need for volunteers and a decrease in persons willing to volunteer.
- COVID19 concerns may impact a willingness for persons to volunteer.
- Increased federal volunteer programs that provide compensation now compete for volunteer bodies.
- This will be dependent on your location and the type of volunteer services you are looking for.

Volunteers in General

Generally, volunteers are just that, they volunteer their time, effort, equipment... at their own cost and at their own risk.

There are different immunities provided in the statute for some specific types of volunteer services, meant to protect the volunteer.

Immunity does not equate to an absence of risk or liability. Those using volunteers will still need to defend lawsuits for the vicarious liability of their “agents”, and hope the court enforces the immunity provisions.

Injured volunteers would typically bring a lawsuit the same as any other third party. Some companies buy injury policies for volunteers to lower the number of these lawsuits. Most will use waivers as well.

Non-Profit Volunteer Immunities

- 78B-4-101 provides immunity for volunteers to non-profit entities and the non-profit agency, as long as the volunteer was acting in good faith, except to the extent the non-profit has insurance covering the volunteer's actions.
- Exception is to injuries from use of automobile.

Government Volunteer Immunity

- UCA 63G-8 Immunity for Persons Performing Voluntary Services Act.
- Provides immunity for a volunteer under the general supervision of a public entity unless actions were grossly negligent, not made in good faith, or made maliciously.
- Exception is to use of an automobile.

Government Volunteer Act

- UCA 67-20 Utah Volunteer Government Workers Act
 - Defines a governmental volunteer
 - Identifies exceptions to who is a volunteer
 - Identifies purposes for which a volunteer is an employee
 - Identifies benefits provided volunteers with exceptions for certain volunteers
 - Provides for experience credit for government volunteer service

Prohibition of Unauthorized Volunteers

- Volunteers “**may not donate any service to an agency** unless the volunteer’s services are approved by the chief executive **and** HR Director.”
- Plaintiffs who do not want volunteer protected by immunities and tort caps will argue they were not an employee and were prohibited from the activities they were performing by statute. Plaintiff would further argue the county was negligent in allowing the individual to perform volunteer services when they were not authorized to do so.

Volunteer Definition

- “Volunteer” means any person who donates service without pay or other compensation of any kind, except expenses actually and reasonably incurred as approved by the supervising agency.
- Volunteer does not mean:
 - Persons participating in human subject research;
 - A Compensatory Service Worker;

Compensatory Service Worker

- A person who performs a public service with or without compensation for an agency as a condition or part of the person's:
 - a) Incarceration;
 - b) Plea;
 - c) Sentence;
 - d) Diversion;
 - e) Probation; or
 - f) Parole.

We only pay them a little...

- If they are given anything other than just reimbursement of actual expenses (per diem, tickets, meals...) they are no longer a volunteer, they are a seasonal part time employee.
- If you give them rodeo or concert tickets, have them agree that they are attending the rodeo to assist evacuation of the bleachers in case of emergency, now they are a volunteer again.

Classifying Those Who Serve

- Volunteer
 - Donated service with no compensation
- Independent Contractor
 - Written contract for service
 - Advertises and performs similar service to others
 - Provides their own equipment
 - Paid for service, not by the hour – profit is a gamble
 - Control of how work performed is left to contractor
 - Professional Employee Organization (PEO) contractors
- Employee
 - Anyone that provides service for compensation that is not an Independent Contractor. Employee may have a contract for employment, but during the term of the contract, they are an employee.

Purposes for which Volunteers are Employees

- Workers Compensation Medical Benefits
- Liability
- Automobile Liability

Exceptions to Lost Time Benefits

- Volunteer Safety Officer
 - Exercises Peace Officer Authority under supervision of agency; or
 - If agency is a fire department the volunteer is on the rolls of agency and not regularly employed as a firefighter by the agency
 - Benefits paid based on Statewide Average Weekly Wage
- Volunteer Search and Rescue Team Member
 - Certified as a member of a county sheriff's search and rescue team; and
 - Acting in the capacity of a member of the supervising county sheriff's team
 - Creates issues with non-county teams and volunteers from other counties
 - Benefits paid based on starting wage of a deputy

THESE VOLUNTEERS CAN SIGNIFICANTLY IMPACT YOUR WC PREMIUM COST

Issues with Volunteer WC Claims

- Limits liability as WC is sole remedy against employer.
- Can be misused as a way to get treatment for items not covered by their medical insurance.
- If receiving lost time benefits, often no job to return to, or other employer will not return them until 100%. Benefit may be higher than after tax wages at job. No incentive for individual to terminate treatment or be released to work.
- Losses are counted against employer's experience modification factor. Will increase rate for all employees for three year period.

Liability

- Any injury to persons, or damage to others property.
- Civil rights violations, discrimination, harassment...
- Negligent supervision, negligent hire, negligent retention.
- State claims for injury to damage to property are protected by immunities and limited by tort caps.
- “Protection and Indemnification normally afforded a paid government employee”
- U.C.A. 63G-7-902 requires agency to defend and pay judgements against employees – and government volunteers
- Federal claims have no immunities or tort caps.

Auto Liability

- While driving county car, county is liable for all accidents.
- Driving personal vehicles while performing volunteer services, personal insurance will respond first, and county will be secondary if personal insurance limits are not high enough. County should plan to defend the entire claim as most claims will be for more than insurance limits.

Let's Review

- General Volunteer
 - WC Medical Benefits
 - Liability including Auto Liability
- Volunteer Safety Officer
 - WC Medical and Lost Time Benefits (SWWW)
 - Liability including Auto Liability
- Search and Rescue Team Member
 - WC Medical and Lost Time Benefits (Starting Deputy)
 - Liability including Auto Liability
- Compensatory Service Worker
 - WC Medical Benefits Only

Others That Don't Clearly Fit in the Volunteer Definition

- Student interns (see U.C.A. 53B-16-402, employee of school for WC)
- Explorer Type Programs
- Ride-a-longs
- Jurors
 - (just kidding, jurors are defined as government volunteers!)
- School or community group volunteers

To Authorize or Not Authorize

- Authorization is accepting liability, but prohibits lawsuits by volunteer.
- Provides immunities and limits claims against volunteers to tort caps.
- May help in recruiting volunteers.
- Do you have the resources to:
 - Train all volunteers?
 - Drug test volunteers
 - Provide personal protective equipment
 - Supervise volunteers
 - Provide all other liability safeguards provided employees?

Volunteer Authorization

- Review screening/acceptance process for volunteers.
- Authorize volunteers for specific program or duties.
- Assure all volunteers are on approved roster.
- Review rosters regularly to remove inactive volunteers.
- Have procedure for accepting volunteers quickly when needed. (Executive Designee)
- Review duties assigned to volunteers. Consider restricting volunteers from high-risk duties.

Volunteer Policies

- Consider changes to county personnel policies to consider volunteers or develop separate volunteer policies.
- Consider how county will “discipline” volunteers.
- Review county policies with all volunteers prior to service.
- Provide safety training and equipment.
- Consider need for drug testing of volunteers.

Using someone else's volunteers

- Volunteer facilitator (chamber, charity) has immunity unless an act is grossly negligent, not made in good faith, or with malicious intent.
- Federal volunteer programs generally have immunity.
- Have agreement with the other party that they are providing their volunteers to provide you service, not that they are identifying volunteers that will volunteer to you.

Volunteer Health Practitioners

- Volunteer Health Practitioners have immunity under UCA 58-13-2 for care provided during a “declared major public health emergency” for actions that are not grossly negligent or intentional.
- Under UCA 26-49-601, Volunteer Health Practitioners are considered employees of the state for purposes of receiving workers compensation medical benefits for injuries, which is the volunteer’s sole remedy.
- UCA 26A-1-126 allows a local health department to establish a Medical Reserve Corps, which should qualify for immunity as volunteer health practitioners when performing during an emergency.

New Immunities

- Lots of new immunities in special sessions during COVID19.
- The problem with new immunities is they likely violate the state constitution under the open courts rule.
- Open courts rule put simply says the state cannot take a right to sue another party that previously existed.
- Review Utah Supreme Court case on Medical Malpractice limitation of liability for guidance.

Questions?

- Thank you!